

E-FILED - 3/12/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAMONTE BEVERLY,

No. C 05-2507 RMW (PR)

Petitioner,

ORDER DENYING PETITIONER'S
REQUEST FOR APPOINTMENT OF
COUNSEL

v.

BEN CURRY, Warden,

Respondent.

_____/ (Docket No. 25)

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has filed a request for appointment of counsel. The court DENIES petitioner's request (docket no. 25) without prejudice.

DISCUSSION

Petitioner moves the court for appointment of counsel. Petitioner requests that the court appoint counsel because he is indigent, unable to afford counsel, and in order for his interests to be protected in this matter. See Pet.'s Request at 1. However, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). While 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas petitioner if "the court determines that the interests of justice so require," the courts have made appointment of counsel the


1 exception rather than the rule. Appointment is mandatory only when the circumstances of a
2 particular case indicate that appointed counsel is necessary to prevent due process violations.
3 See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Eskridge v. Rhay, 345 F.2d 778,
4 782 (9th Cir. 1965).

5 At present, the court notes that petitioner has aptly presented his claims so far and no
6 evidentiary hearing appears necessary based upon the claims presented. Accordingly,
7 petitioner's request for appointment of counsel (docket no. 25) is DENIED without
8 prejudice. The court notes that petitioner's traverse is currently due **on or before March 28,**
9 **2008.**

10 Petitioner must keep the court and all parties informed of any change of address by
11 filing a separate paper captioned "Notice of Change of Address." He must comply with the
12 court's orders in a timely fashion. Failure to do so may result in the dismissal of this action
13 for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

14 IT IS SO ORDERED.

15
16 Dated: 3/12/08



RONALD M. WHYTE
United States District Judge

1 This is to certify that on 3/12/08, a copy of this ruling was mailed to the following:

2 Lamonte Beverly
3 V-07217
4 CTF-North
5 Post Office Box 705
6 Soledad, CA 93960-0705
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